

Attendance: James Henderson-Chairman, John Papacosma-Vice-Chairman, Howard Nannen, Don Rogers, Dorothy D. Carrier, John Papacosma, Sam Alexander-Associate, Richard Neiman-Associate, Noel Musson - Planner, Karen O'Connell-Recording Secretary.

The meeting had been advertised in the Times Record, videotaped, recorded, and broadcast live on Harpswell TV. Chairman Henderson called the meeting to order at 6:30 P.M., introduced above members and staff and led the pledge of allegiance. Henderson then reviewed general Board procedures and the agenda for the evening.

Approval of Minutes -

**Motion - The minutes of August 21, 2002 were approved with several corrections.
(Motion by Carrier and seconded by Nannen - Carried 5-0)**

Motion - The minutes of the September 4, 2002 Board Site Visit were approved with corrections. (Motion by Rogers and seconded by Henderson - Carried 5-0)

Letter of Appreciation to Linda Toothaker - Henderson read a letter of appreciation to Linda Toothaker, a former Board Member, thanking her for her outstanding contribution to the Board. The letter was signed by Board Members and Selectmen.

02-08-2 Sunset Ridge L.L.C., Chris, Bill, and Jeremy Saxton, Subdivision Review, Inland (Tree Growth), Tax Map 12-109, off Sunset Cove Rd., (R/W Access off Harpswell Neck Road)

Chairman Henderson noted there had been a recent Site Visit by the Board and the review this evening is to determine if the formal proposal by the Saxtons conforms to the Town Land Use Ordinances. Henderson explained the Planning Board does not deal with hardships and variances but determines if the proposal meets the requirements of Town Ordinances. He advised that if there is a disagreement with the Planning Board actions, then the matter may be appealed to the Board of Appeals.

Applicant Presentation -

Mark Vannoy, Civil Engineer for Wright Pierce noted that there have been several changes or additions since the formal submittal of the proposal and these changes are based on comments from Noel Musson and outside review. These items include minor changes in the grading plan and the addition of a common driveway to lots 5 and 6 (which must be permitted by the State Department of Environmental Protection as the driveway crosses a wetland).

Vannoy explained the plan is for a 7 lot subdivision on approximately 16 acres, to be set back 900 feet from the road with a good wooded buffer. He noted the following: a private access road is planned to meet Town Ordinances; there will be on site waste disposal; individual wells are planned; and all utilities will be underground.

Jim Hillier, Maine Certified Geologist summarized a letter he had submitted noting his review of the property indicates the property should yield adequate water supply. Henderson indicated he saw there had been review of adjoining areas and wondered what direct information Hillier had on this specific site. Hillier explained: he had walked the property; had knowledge of a number of monitoring wells in the area related to the Fuel Depot; there have been no water quality problems and no migration of petroleum to this site; the septic disposal sites are planned sufficiently up gradient to not pose a problem for water quality, and that the septic design includes use of the most suitable soils on site and meet Maine Plumbing Codes. Hillier noted that in the event that a particular lot's well does not yield sufficient water, then water could be accessed via an easement to one of the lots controlled by the Saxtons. Hillier indicated the water draw of a typical house at 300 gallons a day is not that demanding on an aquifer. He indicated any well that would produce a gallon or more per minute could meet the needs for general household water supply.

Public Comment -

Marjorie Greenhut, a neighbor on the North side of the proposed development, indicated she was concerned because her well almost went dry and she wondered about the impact on water supply with more than one house in this development. She indicated she would like more explanation of the map. Hillier

responded there had been issues with wells during drought conditions, and noted that bedrock aquifers, like the ones common in Harpswell, are interconnected through a web-like network. He reported it is a misconception, and unlikely, that one well can make another go dry. Hillier indicated it is more likely for wells to be impacted by general conditions of drought than for a subdivision of this size, with recharge of the water supply, to cause this impact. Hillier indicated the amount of water to be pulled by this Subdivision should not impact other area wells. Henderson asked if the possible easement for well water supply could be a condition for approval. The Saxton's indicated they could consider making this a condition.

Hartwell Prince, a neighbor who lives East of the site, indicated he has two wells on his property and one produces 50 gallons a minute (GPM) and the other thirty GPM. He indicated he believes there is enough water in the area based on this.

Nannen asked about 100 foot setbacks between wells and septic and Vannoy indicated setbacks met the standards. Vannoy indicated there is also a letter included in the file from Fred Perry, local well driller, where Perry indicates his opinion there is sufficient water on the site. Vannoy, in response to Greenhut's request to clarify the map, reviewed the location of the proposed subdivision on the map noting its location off Harpswell Neck Road. He indicated the access road is 18 feet wide and the subdivision sits approximately 900 feet off the road.

Application Review -

Henderson referenced a September 11, 2002 memo on file from Town Planner, Noel Musson raising items for review. Musson indicated he had decided to hold off on the storm water management consultant for the time being because of setback issues and cost factors

Requirements of Section 8 - Henderson indicated per Musson's review of the applicant's file for completeness, it appears the file is complete. Henderson noted that Musson had reviewed requirements of Section 8 of the Ordinance and several do not apply. The applicants submitted a Letter of Financial Capacity from Androscoggin Bank. It was confirmed that the Saxtons have the option to buy the property. Henderson confirmed that contour maps were provided showing two foot intervals.

Requirements of Section 9 - Henderson then requested the Planning Board review of the requirements of Section 9 of the Subdivision Ordinance. Henderson reviewed the first few sections with no issues raised and confirmed owners would clear their own sites. Henderson indicated 9.4 is covered as lot sizes meet the standard. Henderson referenced Section 9.5 "Land Not Suitable for Development" and indicated that there are issues in that wetlands may not be used in calculating lot areas. Vannoy confirmed that wetlands had been included in his calculations of lot sizes because they had questions as to how contiguous wetland is measured or calculated. The Board discussed the file memo from the Town Attorney which references customary use of the term contiguous. Henderson indicated the memo indicates generally anything next to a wetland was seen as contiguous.

Al Frick Soil Scientist and Site Evaluator - indicated that narrow stream channels pose dilemmas for measurement of wetlands. Frick explained that most wetlands flow into other wetlands and begin to build to sizeable acreage if measured as one wetland. Frick indicated measuring such contiguous wetlands did not meet the intent of measuring larger 10 acre wetlands. He argued that the DEP had created a methodology to help determine contiguousness. The method allows narrow wetlands, less than 100 feet wide and more than 100 feet long, to be severed or separated for purposes of contiguousness. Frick indicated, referencing Town Attorney Dagget's letter of September 10, that the customary/ordinary practice of soil scientists and wetland mappers is to use the above noted DEP practice or methodology when measuring contiguous wetlands. Frick indicated this is why they were proposing this method be used. Frick noted, with 7 lots on the 16 acres, there is a good upland area for each lot and it meets the spirit of the ordinance.

Roland Mayo - Former Codes Officer in Harpswell raised the issue of forested wetlands. He indicated the Town had recently intended to resolve the issue of forested wetlands with an ordinance change which in the end, because it was part of a larger group of items, did not pass at Town Meeting. He indicated if the forested wetlands have to be removed from the lot area this will make a number of the lots unbuildable. Nannen asked to clarify the issue. Mayo responded that it was his understanding that forested wetlands had not been intended to be included in calculating wetlands, and there was a plan to correct this with an ordinance change. Henderson responded that, regardless of various opinions as to what the ordinance should be, the Board was required to apply the ordinance as it is. Mayo indicated everyone knew there was a fault in the ordinance and it is an issue of fairness as how to deal with it now. Mayo indicated that the Shoreland Ordinance excluded forested wetlands.

Henderson read from June 24, 1998 Minutes page 2, (next to last paragraph) which stated “ it was noted that these forested wetlands meet the definition and therefore should not be exempted from consideration.” Henderson also read from July 29, 1998 Minutes where it was concluded similarly that the forested wetlands need to be included in calculations.

Rogers indicated he had not noted wetlands on the site visit. Papacosma explained that the vegetation signals a wetland and he is concerned the about the water which drains out of this site draining into the bay and there needs to be attention paid to the function of the area to protect the bay from run off.

Henderson indicated the two questions the Board must address involve definition or interpretation of wetland and how wetlands are measured. Henderson indicated there is no basis for a forested wetland not being a wetland and proposed the following motion. **Motion - That the Board finds that a forested Wetland is a wetland within the requirements of the Ordinance for setback purposes.** (Motion by Henderson and seconded by Nannen)

Henderson clarified that with a full compliment of regular members, the regular members would be voting and associate members would participate in discussion. Vannoy indicated they had looked at how the ordinance had been interpreted in the past using the Allen/Bowie Subdivision as an example. Vannoy indicated they look at decisions in other subdivisions to understand how ordinances are interpreted and he had followed setbacks as demonstrated on that plan. Henderson indicated he believed that Woodlot Alternatives may have identified the wetlands in this case.

Albert Frick indicated if the rule is strictly that “all” other wetlands applies, then small puddle sized wetlands would then require 75 foot setbacks. Henderson clarified with Musson that Section 9.10 requires a 75 foot setback from “all” wetlands in subdivisions. Vannoy indicated that they are following Maine Codes which protect resources. Vannoy indicated if they followed State standards for measurement they would be under the 20,000 square foot size wetland. Papacosma indicated the plan drawing indicates a swath of wetland. He discussed a 75 foot setback as the ordinance requirement. Nannen clarified the Town Attorney’s definition of “contiguous”, using common understanding, does conflict with the technical/field usage of the term.

In reference to the calculated area of all wetlands on this site, Vannoy indicated the wetland associated with the intermittent watercourse on the property was well over 20,000 square feet and close to an acre. But he explained, if they follow State standards, it is less than 20,000. Nannen clarified that the Board must consider any wetland on the property contiguous or not. Frick indicated the Wetlands Definitions become confusing and complicated where freshwater wetlands are mentioned, Frick noted the definitions State “other than forested wetlands”. Frick indicated it is not practical in Harpswell to ask for a 75 foot setback from any wetland. Henderson indicated the Town Attorney’s letter indicated “all” other wetlands apply when calculating for lot area. Alexander raised the issue that if this is considered a forested wetland, then every intermittent watercourse is a forested wetland.

The Board discussed boundaries for measurement and Henderson indicated he believes the Wetland is to be measured within the subdivision.

Board Vote - The Board voted 3-2, in favor of the above motion.

To resolve the method for measurement of the wetland the following was proposed: **Motion - The Board accepts the applicant’s contention that the Department of Environmental Protection (DEP) standards for measuring a contiguous wetland, is the standard the Planning Board should use.** (Motion by Henderson and seconded by Rogers)

Board Discussion -

Musson indicated when Town ordinances were passed, the law in place with the State was the same. Musson suggested, since the State rule has changed, but the Town has not changed ordinances, it would probably make sense to use the state’s methodology. Papacosma indicated the Board could decide to be more stringent and Musson agreed. Musson indicated the language in the subdivision ordinance will need to be worked on.

Frick further explained the DEP practice, indicating it is an unwritten policy to sever narrow wetland channels when calculating size, and he sent copies of Department of Environmental Protection examples of this measurement practice. Frick described the site wetlands and then noted that the soils are not suitable for septic except those closer to the wetland. He noted the decision to require 75 foot setbacks from all other wetlands, of “any” size, is a devastating ruling because of a number of small wetland areas on the site.

The Board discussed the number of lots which would be workable with the 75 foot setback and

learned from Frick there was significant impact on development leaving possibly only four lots as buildable. It was suggested the applicant consider clustered development and preserve wetland area. Frick explained that there are problems with the soils and the undulating land has only limited pockets suitable for septic and that larger shared septic systems require even greater setbacks.

Henderson asked the Board to refocus on the issues the Board must decide. The Board reviewed the advice of the Town Attorney on the use of the term contiguous and discussed the more general meaning and customary use of the word contiguous. Henderson indicated taking the general use of the term contiguous would mean any small area would be included in calculations of the size of a wetland, while the DEP methodology focuses more on critical masses rather than all small segments.

Papacosma indicated he believed that the Board might be legislating something not in the Town ordinance if they accepted the DEP methodology, and indicated because the Board has no specifics they were defaulting and following DEP practice rather than literal following of our own ordinance. Further he indicated that recent Board decisions on wetlands in other developments have excluded such wetlands from developable property. Nannen indicated he would like to learn more about this practice, before interpreting legislation. He indicated the Board often relies on DEP for guidance and is inclined to believe the measurement methodology is a DEP policy if it has been followed since 1990. Henderson clarified with Musson that the information was a recent fax (August 23, 2002) and noted the implication is that this would still be the policy. Frick indicated that when the 10 acre wetland standard was in place, this was the industry standard used to determine size of the wetland. Frick added, most communities are not faced with this issue, as they have more specifics in their ordinances. He noted the new DEP practice is to regulate all wetlands regardless of size. Musson indicated he felt the DEP methodology was appropriate for current Town ordinances.

Papacosma indicated based on discussion, he was now more comfortable with this method absent such specifics in our own Town Ordinances.

Nannen indicated contiguity and measurement of the wetland has nothing to do with the 75 foot setback required. Frick indicated he agreed, but did not believe that the 75 foot setback from "any" small wetland was the intent of legislation because it is not practical and makes the interpretation very devastating. Frick confirmed that he had identified, on the site plan maps, all areas that met the criteria for a wetland including any wetland of any size.

Board Vote on DEP Practice/Methodology - The Board then voted on the previous motion (Carried 5-0 in favor) - See motion page 3 above. Henderson summarized the rationale for voting in favor of the motion is because it was customary among the professional community making these judgments and governed by the ordinances in place at the time.

Saxton asked to clarify that small wetlands will require the 75 foot setback and determining size of a wetland does not matter for setbacks. He referenced the 25 foot setback on the Bowie Subdivision as apparently conflicting. Henderson indicated he would not go back on that issue and clarified that the Board of Appeals could potentially consider a variance or make a different ruling on this issue. Alexander indicated he did not believe the Appeals Board could grant undue hardship on an item that is a proposal.

Henderson clarified with Musson that there were no other outstanding issues other than the storm water management issue. Henderson reminded the applicant there would be an option for any lot purchaser to access water by an easement to another lot if there was a problem on their particular lot. Papacosma asked to clarify the proposed Association Agreement in reference to #17 which indicates all lot owners are paying upkeep on road except creators of lot (Sunset Ridge). Bill Saxton confirmed that lot owners are responsible for upkeep but not Sunset Ridge LLC.

Henderson indicated he felt the Board should indicate through a motion that they had completed the review approving all but certain items. **Motion - The Board finds that the applicant, Sunset Ridge L.L.C., has met the requirements of the Subdivision Ordinance and related ordinances with the following conditions: 1. That a written commitment be made to buyers of lots that they will have access to alternate water supply should they be unable to obtain water on their lot, and 2. That the Planning Office must receive and approve a review of the storm water management plan by an independent consultant, except the Board finds that the current proposal does not meet the 75 foot setback requirements from wetlands and therefore the Board denies the application.** (Motion by Henderson and seconded by Papacosma)

Board Discussion - Carrier and Rogers indicated they had a problem with the denial as they did not agree on a previous vote. The Board discussed the process that would take place if this case were to go before

the Appeals Board and other options for the applicants such as court appeal. Henderson clarified with Rogers that the vote on measuring the wetland and contiguous areas is a separate issue from the 75 foot setback issue. Papacosma indicated he understands that the Board of Appeals could rule on the 75 foot setback issue. Henderson indicated that if there were other issues with the application they should be exposed now.

Roland Mayo- indicated there is only one section for appeals on wetlands and that is the determination of the "classification" of wetlands. Mayo referenced Subdivision Ordinance 14.1- Decisions Subject to Appeal, Sub-sections 9.5.3 and 9.10. Henderson indicated the wetlands were determined by a qualified professional so this was not an issue. Frick asked whether 8.3.2.35 would be applicable as an appeal and Henderson indicated the matter is specifically set forth in the ordinance but indicated the applicant and their attorneys would have to make the decision as to how to proceed.

Board Vote - The Board then voted 3-2 to deny the application. - see motion page 4

02-09-1 Camp Kieve (A Non-profit Corporation), Represented by Patrick Lydon, Business Manager, Pre-application conference for a Site Plan Review, Commercial Fisheries I, Tax Map 8-40, Lookout Point Rd.

Henderson asked the representatives in this matter to concentrate on any areas of the ordinances that might be an issue.

Applicant Presentation -

Pat Lydon, Business Manager for Camp Kieve indicated they had a proposed school planned to be located at the Lookout Point Property. Lydon noted they had talked with the Town Planner and Codes Officers to learn about requirements and how ordinances would apply. Lydon indicated they had thought they would have made further progress on the project for this meeting but, a week ago they learned that there are issues within the text of the Shoreland Ordinances, Table of Land Uses. Lydon indicated they had just learned that their proposed use would be a non conforming use. Musson noted the Codes Office makes a determination on allowed uses. The Board reviewed Table 15.5 on allowed uses noting Institutions are not permitted in this zone.

Lydon asked for information that would be helpful to them in pursuing this proposal. Lydon asked what process they would need to follow to make a change to allow this facility. Henderson indicated the Planning Board cannot change the ordinance and would have to deny this use. Henderson indicated the Land Use Committee is in process of working on ordinances. Musson indicated that as this was a pre-application conference and the applicants at this point are seeking information as to what ordinances apply and what steps they might be able to take. Musson asked the Board what Change of Use standards would have to be met by applicants.

Board members asked for more information about the school. Lydon indicated the school would be active for 9 months with two, four month semesters. He indicated there would be 40 students and staff people on site during the day and fewer people at night, since staff would live off site. It was clarified that the current use as an Inn, involves 27 people plus the two innkeepers during the day for a year round season with water usage for daily linen changes. Papacosma indicated questions that might come up would involve septic and such other items related to the change of use. He indicated that though the activity may be non-conforming, it does not sound like it would interfere with Marine resources. Sam Alexander indicated one course of action would be to take the issue to a Town Meeting for a vote to allow a spot zoning change. Musson indicated Camp Kieve needs to know what else besides the ordinance change; they need to know what to look at to allow this use. Henderson indicated the Board would be looking at the impact of items such as water use, septic issues, storm water run off, and traffic for example. Lydon indicated septic use had been reviewed by Albert Frick and he had verbally reported the site is able to handle the septic.

Nannen referenced a chart of permitted uses and Section 15 of the Ordinance with standards that might relate to the proposal and suggested this section would be helpful to the applicant. Nannen indicated if the School could be determined to be a commercial use, it could be permitted but the Codes Officer must make this determination. Musson indicated he is fairly certain the Codes Office would make a determination that this is an institutional use.

Lydon indicated he is trying to figure out the path to make the proposal work. Henderson indicated the applicants should review the standards suggested by Nannen. Nannen indicated the Town Meeting is the

zoning body of the Town. Sam Alexander indicated there are examples of exceptions and noted the Town Office lot is the only lot in town that can be used for governmental or institutional use.

Musson indicated he felt that the Camp Kiev use would be beneficial to Harpswell. Lydon indicated the emphasis of the school is marine sciences. Board members indicated it might be helpful if the applicants communicate with the community. Papacosma indicated he dislikes spot zoning but feels that productive uses that do not have ecological impact could be part of a comprehensive ordinance that might allow such beneficial uses.

Other Board Business-

By-Laws on File - Henderson advised Board Members that he had e-mailed an official copy of the Board By-Laws to Musson so they could be easily accessed there by Board Members.

Record Maintenance and Notices of Decision - Musson distributed handouts/reading material on record maintenance and notices of decision.

Upcoming Site Visit - Musson indicated the next meeting agenda will include a request for an amendment to an approved site plan involving the Soper property and Musson asked to schedule a site visit which will need to be scheduled on a day other than Monday. Musson indicated there are three specific issues including; trap storage, bait cooler, and fuel tank placement. Board members were advised to wear clothing appropriate for the site visit to a bait shed. Musson indicated he would schedule the site visit.

Planning Board Workshop on Ordinances - A workshop was scheduled for Wednesday October 9 at 6:30 P.M. to discuss any issues with Town Ordinances. Several Town committees may combine for this workshop and Musson asked for input from members of the Board for any specific topics for the agenda.

Adjournment - Motion- Henderson made a motion to adjourn (Motion by Henderson and seconded by Carrier - Carried 5-0) The meeting was adjourned at 10:10 PM

Respectfully Submitted,

Karen O'Connell, Recording Secretary